

STATE OF MICHIGAN
COURT OF APPEALS

DARRYL MCGHEE,

Plaintiff-Appellant,

v

WAYNE COUNTY,

Defendant-Appellee,

and

JOHN A. LYONS,

Defendant.

UNPUBLISHED

January 16, 2007

No. 270107

Wayne Circuit Court

LC No. 05-527373-AE

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying summary disposition to the Wayne County Law Enforcement Supervisory Local 3317-A.F.S.C.M.E., AFL-CIO (Local 3317), granting summary disposition in favor of defendant, and affirming the arbitrator's decision to deny the grievance that Local 3317 filed on plaintiff's behalf. Because none of plaintiff's allegations give rise for a sufficient legal cause for this Court to set aside the decision of a labor arbitrator, we affirm the decision of the trial court.

Plaintiff, a sergeant for the Wayne County Sheriff for over 20 years, was terminated from his employment after a random drug test¹ performed on March 1, 2005, revealed the presence of cocaine metabolites in his urine. Eight days later, on March 9, 2005, plaintiff voluntarily subjected himself to a second drug test, which was negative for the presence of cocaine metabolites. Article 18 of the CBA contains a comprehensive drug-free work place policy, which provides, in part: "In general, where use, possession, sale or distribution of certain drugs would be a basis for a felony charge, the employee will be discharged." (Emphasis omitted.)

¹ Section 18.01A.4. of the collective bargaining agreement (CBA) between plaintiff's union, Local 3317, and Wayne County permits "[r]andom testing of all employees in the bargaining unit as determined by computer lottery selection or other such method."

Defendant terminated plaintiff's employment at an administrative review and determination hearing on March 23, 2005. Local 3317 filed a grievance alleging that defendant's termination of plaintiff's employment violated various provisions of the CBA. The grievance was denied and proceeded to arbitration. The arbitrator denied the grievance and affirmed defendant's termination of plaintiff's employment. Thereafter, plaintiff and Local 3317 separately appealed to the Wayne County Circuit Court seeking to overturn the arbitrator's decision, and the trial court consolidated the cases. Local 3317 moved for summary disposition under MCR 2.116(C)(8) and (10), seeking to vacate the arbitration award. The trial court denied Local 3317's motion, granted summary disposition in favor of defendant, and affirmed the arbitrator's decision. This appeal followed.

This Court reviews de novo a trial court's decision to enforce, vacate, or modify an arbitration award. *Saveski v Tiseo Architects, Inc.*, 261 Mich App 553, 554; 682 NW2d 542 (2004); *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). However, judicial review of an arbitrator's decision is narrowly circumscribed. *Police Officers Ass'n of Michigan v Manistee Co.*, 250 Mich App 339, 343; 645 NW2d 713 (2002). A court may not review an arbitrator's factual findings or decision on the merits. *Id.*, citing *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). The inquiry for the reviewing court is whether the award was beyond the contractual authority of the arbitrator. *Id.* If, in granting the award, the arbitrator did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. *Id.* "A reviewing court has three options when a party challenges an arbitration award: (1) confirm the award, (2) vacate the award if obtained through fraud, duress, or other undue means, or (3) modify the award or correct errors that are apparent on the face of the award." *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). A "party seeking to vacate or modify an arbitrator's award must establish that the arbitrator displayed a manifest disregard of the applicable law 'but for which the award would have been substantially otherwise.'" *Id.*, quoting *DAIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).

Plaintiff makes numerous arguments on appeal. Some of plaintiff's arguments ask this Court to review factual findings or review the merits of the arbitrator's decision, which we cannot do. *Police Officers Ass'n of Michigan, supra* at 343. Other arguments ask this Court to rule on procedural issues that arose during arbitration, which this Court also cannot do. *Detroit v Detroit Police Officers Ass'n*, 408 Mich 410, 494; 294 NW2d 68 (1980). Because there is no evidence that the arbitrator's award was obtained through fraud, duress, or other undue means and there are no errors that are apparent on the face of the award, we cannot second-guess the decision of the arbitrator. We therefore must confirm the arbitrator's award. *Krist, supra* at 67.

Affirmed.

/s/ Stephen L. Borrello
/s/ Janet T. Neff
/s/ Jessica R. Cooper